

Senate Bill No. 935

Passed the Senate August 31, 2012

Secretary of the Senate

Passed the Assembly August 23, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 71200, 71201, 71204, 71204.6, 71204.7, and 71205 of the Public Resources Code, relating to ballast water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 935, Committee on Environmental Quality. Ballast water.

The Marine Invasive Species Act, which generally applies to all vessels carrying or capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state and to all ballast water and associated sediments taken on a vessel, imposes specified requirements on the master, owner, operator, or person in charge of one of those vessels to minimize the uptake and release of nonindigenous species, including the removal of hull fouling organisms from the hull, piping, propellers, sea chests, and other submerged portions of a vessel on a regular basis, and the cleaning of the ballast tanks regularly to remove fouling organisms. The act defines terms for its purposes.

This bill would define and refer to “biofouling” instead of “hull fouling” as the attachment or association of marine organisms to the “wetted,” as defined, instead of “submerged” portion of a vessel or its appurtenances, including, but not limited to, sea chests, propellers, anchors, and associated chains. The bill, instead, would require the master, owner, operator, or person in charge of a vessel arriving at a California port or place to remove biofouling organisms from the hull, piping, propellers, sea chests, and other wetted portions of a vessel on a regular basis.

Existing law provides that if an owner or operator of a vessel applies to install an experimental ballast water treatment system and the State Lands Commission approves that application on or before January 1, 2008, the commission would be required to deem the system to be in compliance with any future treatment standard adopted for a specified period of years.

This bill would allow that system if the commission approves that application on or before January 1, 2016.

The bill would make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 71200 of the Public Resources Code is amended to read:

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) “Ballast tank” means a tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) “Ballast water” means water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) “Biofouling” means the attachment or association of marine organisms to the wetted portion of a vessel or its appurtenances, including, but not limited to, sea chests, propellers, anchors, and associated chains.

(d) “Board” means the State Water Resources Control Board.

(e) “Coastal waters” means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.

(f) “Commission” means the State Lands Commission.

(g) “EEZ” means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.

(h) “Exchange” means to replace the water in a ballast tank using either of the following methods:

(1) “Flow through exchange,” which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the number of original coastal organisms remaining in the tank.

(2) “Empty/refill exchange,” which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(i) “Mid-ocean waters” means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(j) “Nonindigenous species” means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range, including any of those organisms transferred from one country into another.

(k) “Pacific Coast Region” means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. The commission may modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described herein.

(l) “Person” means an individual, trust, firm, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. “Person” also means a city, county, city and county, district, commission, the state, or a department, agency, or political subdivision of the state, an interstate body, or the United States and its agencies and instrumentalities, to the extent permitted by law.

(m) “Sediments” means matter settled out of ballast water within a vessel.

(n) “Waters of the state” means surface waters, including saline waters, that are within the boundaries of the state.

(o) “Wetted portion of a vessel” means all parts of a vessel’s hull and structures that are either submerged in water when the vessel is loaded to the deepest permissible legal draft or associated with internal piping structures in contact with water taken onboard.

(p) “Vessel” means a vessel of 300 gross registered tons or more.

(q) “Voyage” means any transit by a vessel destined for a California port or place from a port or place outside of the coastal waters of the state.

SEC. 2. Section 71201 of the Public Resources Code is amended to read:

71201. (a) This division applies to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel, and to all biofouling.

(c) This division may be known, and may be cited, as the “Marine Invasive Species Act.”

(d) The Legislature finds and declares that the purpose of this division is to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable. This division shall be implemented in accordance with this intent, except as expressly provided by this division.

SEC. 3. Section 71204 of the Public Resources Code is amended to read:

71204. Subject to Section 71203, the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(a) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(b) Minimize the discharge or uptake of ballast water in areas within, or that may directly affect, marine sanctuaries, marine preserves, marine parks, or coral reefs.

(c) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(1) Areas known to have infestations or populations of nonindigenous organisms and pathogens.

(2) Areas near a sewage outfall.

(3) Areas for which the master, owner, operator, or person in charge of a vessel has been informed of the presence of toxic algal blooms.

(4) Areas where tidal flushing is known to be poor or in turbid waters.

(5) In darkness when bottom-dwelling organisms may rise up in the water column.

(6) Areas where sediments have been disturbed, such as near dredging operations or where propellers may have recently stirred up the sediment.

(d) Clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements in port or in drydock, to remove fouling organisms and sediments, and dispose of those organisms and sediments in accordance with local, state, and federal law.

(e) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(f) (1) Remove biofouling organisms from the hull, piping, propellers, sea chests, and other wetted portions of a vessel arriving at a California port or place, on a regular basis, and dispose of removed substances in accordance with local, state, and federal law.

(2) For purposes of paragraph (1), prior to and until the date that the regulations described in Section 71204.6 are adopted, “regular basis” means any of the following:

(A) No longer than by the date of expiration on the vessel’s full-term Safety Construction Certificate or an extension of that expiration date.

(B) No longer than by the date of expiration of the vessel’s full-term United States Coast Guard Certificate of Inspection or an extension of that expiration date by the United States Coast Guard.

(C) No longer than 60 months since the time of the vessel’s last out-of-water drydocking. The commission may approve a time extension to this period.

(3) Inwater cleaning that is performed on the wetted portions of a vessel while in the waters of the state shall be conducted using best available technologies economically achievable, and designed to minimize the release of coating and biological materials, cleaning agents, and byproducts of the cleaning process into the surrounding waters. The cleaning shall be performed in accordance with local, state, and federal law.

(g) Provide access to the commission, upon request, for sampling of ballast intake and discharge.

(h) Maintain a ballast water management plan that was prepared specifically for the vessel and that shall, upon request, be made

available to the commission for inspection and review. This plan shall be specific to each vessel and shall provide, at a minimum, a description of the ballast water management strategy for the vessel that is sufficiently detailed to allow a master or other appropriate ship's officer or crew member serving on that vessel to understand and follow the ballast water management strategy.

(i) Train the master, operator, person in charge, and those members of the crew who have responsibilities under the vessel's ballast water management plan, on the application of ballast water and sediment management and treatment procedures, as well as procedures described in this section, in order to minimize other releases of nonindigenous species from vessels.

SEC. 4. Section 71204.6 of the Public Resources Code is amended to read:

71204.6. On or before January 1, 2012, the commission, in consultation with the board, the United States Coast Guard, and a technical advisory group consisting of interested persons including, but not limited to, shipping, port, and environmental conservation representatives, shall develop and adopt regulations governing the management of biofouling on vessels arriving at a California port or place. The commission shall consider vessel design and voyage duration in developing the regulations. The regulations shall be based on the best available technology economically achievable and shall be designed to protect the waters of the state.

SEC. 5. Section 71204.7 of the Public Resources Code is amended to read:

71204.7. (a) On or before July 1, 2005, the commission, in consultation with the United States Coast Guard, shall adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems.

(b) The regulations shall include criteria for the development of a formal application package to use those systems.

(c) (1) If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application on or before January 1, 2016, the commission shall deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed five years from the date that the interim performance standards adopted pursuant to paragraphs (1) and (2) of subdivision (a) of Section 71205.3 would apply to that vessel.

(2) The commission may rescind its approval of the system at any time if the commission, in consultation with the board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in performance, human safety, or environmental soundness relative to anticipated performance, or that the applicant has failed to provide the commission with required test results and evaluations.

(d) The commission shall not approve an experimental ballast water treatment system unless the owner or operator demonstrates that the system has significant potential to improve upon the ability of existing systems to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

(e) The commission shall disseminate to the public the test results and evaluations regarding experimental ballast water treatment systems described in this section.

SEC. 6. Section 71205 of the Public Resources Code is amended to read:

71205. (a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying, or capable of carrying, ballast water, that visits a California port or place, shall provide the information described in subdivision (c) in electronic or written form to the commission upon the vessel's departure from each port or place of call in California.

(2) The information described in subdivision (c) shall be submitted using a form developed by the United States Coast Guard.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the commission upon the vessel's departure from each port or place of call in California.

(c) (1) The master, owner, operator, or person in charge of the vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water on board, total number of ballast water tanks, capacity of each ballast water tank, and total number of ballast water tanks in ballast, using measurements in metric tons (MT) and cubic meters (m³).

(D) Ballast water management information, including all of the following:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(iv) Whether the master, operator, or person in charge of the vessel has claimed a safety exemption pursuant to paragraph (1) of subdivision (b) of Section 71203 for the vessel voyage, and the reason for asserting the applicability of that paragraph.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height

at time of exchange if exchange is conducted, of ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, that shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

(d) The master, owner, operator, or person in charge of a vessel subject to this division shall retain for two years a separate ballast water log outlining ballast water management activities for each ballast water tank on board the vessel and shall make the separate ballast water log available to the commission for inspection and review.

(e) (1) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall provide the information described in subdivision (f) in electronic or written form to the commission annually upon request of the commission. The master, owner, operator, agent, or person in charge of the vessel shall submit that information within 60 days of receiving a written or electronic request from the commission. For purposes of this paragraph, the reporting shall begin on January 1, 2008, and continue until the date that the regulations described in Section 71204.6 are adopted.

(2) (A) The information described in subdivision (f) shall be submitted using a form developed by the commission.

(B) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a copy of the form submitted pursuant to this subdivision on board the vessel for two years.

(f) The master, owner, operator, agent, or person in charge of a vessel subject to this division shall maintain, in written or electronic form, records that include the following information:

(1) (A) Date and location of drydocking events.

(B) Whether the vessel in general, and the wetted portion of the vessel, sea chests, anchors, and associated chains in particular, were cleaned during a drydocking event.

(2) Date and geographic location of all inwater cleaning of the wetted portion of the vessel.

(3) (A) Date and geographic location of all antifouling paint applications to the vessel.

(B) The manufacturer and brand name of the antifouling paint applied to the vessel.

(4) Any additional information required by the commission by rule or regulation.

(g) (1) The master, owner, operator, agent, or person in charge of a vessel subject to this division that has a ballast water treatment system installed on board that is used to comply with this division and has discharged ballast in waters of the state shall provide to the commission based on a schedule to be developed by the commission, by rule or regulation, in consultation with the advisory panel established in Section 71204.9 and the United States Coast Guard, the following information in electronic or written form:

(A) The manufacturer and product name of the ballast water treatment system on board the vessel.

(B) If applicable, the name and organization that has approved the ballast water treatment system and the approval or certification number of the ballast water treatment system technology.

(C) The number of tanks and the volume of each tank that is managed using the ballast water treatment system and that was discharged in waters of the state.

(D) Any additional information required by the commission by rule or regulation.

(2) The information required by paragraph (1) shall be provided on a form developed by the commission.

(h) The master, owner, operator, agent, or person in charge of a vessel subject to this division that has a ballast water treatment system installed on board that is used to comply with this division shall maintain on board the vessel, in written or electronic form,

records, including, but not limited to, all of the following information:

(1) Copies of all reports and forms described in subdivision (g), submitted to the commission.

(2) Material safety data sheets for all chemicals utilized in conjunction with the ballast water treatment system.

(3) System manufacturer's technical guides, publications, and manuals.

(4) Ballast water treatment system performance information, which may be incorporated into the ballast log described in subdivision (d), and includes, at a minimum, all of the following information:

(A) The date, time, and location of the starting and stopping of the system for the purpose of treating ballast water.

(B) System malfunctions or unexpected situations, including problem resolution.

(C) Both scheduled and unscheduled maintenance of the system.

(D) All relevant measures of performance recorded during system operation.

(E) Any additional information required by the commission by rule or regulation.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the protection of the environment at the earliest possible time, it is necessary that this act take effect immediately.

Approved _____, 2012

Governor